IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 11/04/2003

Coram

The Honourable Mr.Justice N.DHINAKAR
and
The Honourable Mr.Justice S.ASHOK KUMAR

Referred Trial No.3 of 2003
and
Criminal Appeal Nos.326, 327, 328, 329 and 338 of 2003

Referred Trial No.3 of 2003

The Additional Sessions Judge
-cum- Chief Judicial Magistrate,
Tuticorin. ..... Referring Officer

-Vs-

1. Ramesh @ Anthony Peter Ramesh
2. Roach @ Anthony Roadh
3. Anburaj
4. Rathinam @ Michael Rathinam
5. Thommai Xavier
6. Dhanapal
7. Ranjith ..... Respondents

Criminal Appeal No.326 of 2003

1. Ramesh @ Anthony Peter Ramesh
2. Thommai Xavier : Appellants

vs.

State rep. by Inspector of Police,
Tharuvaikulam Police Station,
Tuticorin. (Crime No.5 of 1998) : Respondent

Criminal Appeal No.327 of 2003

1. Roach @ Anthony Roach
2. Anburaj : Appellants

vs.

State rep. by Inspector of Police,
Tharuvaikulam Police Station,
Tuticorin. (Crime No.5 of 1998) : Respondent

Criminal Appeal No.328 of 2003

1. Rathinam @ Michael Rathinam
2. Dhanapal : Appellants

vs.

State rep. by Inspector of Police,
Tharuvaikulam Police Station,
Tuticorin. (Crime No.5 of 1998) : Respondent

Criminal Appeal No.329 of 2003

Ranjith : Appellant

vs.

State rep. by Inspector of Police,
Tharuvaikulam Police Station,
Tuticorin. (Crime No.5 of 1998) : Respondent

Criminal Appeal No.338 of 2003

1. A.Navamani @ Michael Navamani
2. A.Yogaraj @ Anthony Yogaraj
3. Athirstaraj @ Anthony Athirstaraj
4. R.Sittrarasu
5. S.Jelastian
6. Sekar @ Anthony Gunasekar
7. S.Kalidas : Appellants

vs.

State rep. by Inspector of Police,
Tharuvaikulam Police Station,
Tuticorin. (Crime No.5 of 1998) : Respondent

Prayer: Reference on and Appeals against the judgment dated 29.1.2003 in Sessions Case No.377 of 2000 delivered by the Additional Sessions Judge -cum-Chief Judicial Magistrate, Tuticorin.

!For Appellants in : Mr.V.Gopinath, Sr. Counsel
Crl.A.No.326/2003 and For Mr.C.Christopher
respondents 1 and 5

in R.T.No.3/2003

For Appellants in : Mr.V.Gopinath, Sr. Counsel
Crl.A.No.327/2003 and For M/s.L.Mahendran and
respondents 2 and 3 G.Anantharangan
in R.T.No.3/2003

For Appellants in : Mr.V.Gopinath, Sr. Counsel
Crl.A.No.328/2003 and For M/s.A.Kumaraguru and
respondents 4 and 6 D.Saravanan
in R.T.No.3/2003

For Appellant in : Mr.V.Gopinath, Sr. Counsel
Crl.A.no.329/2003 and For Mr.R.John Sathyan
respondent 7 in
R.T.No.3/2003

For appellants in : Mr.B.Sriramulu
Crl.A.No.338/2003 For M/s.R.Karthikeyan and
R.Bharanidharan

^For Respondent in all : Mr.I.Subramanian
Criminal Appeals Public Prosecutor

:J U D G M E N T

(Judgment of the court was delivered by N.DHINAKAR, J.)

The reference is by the learned Additional Sessions Judge -cum- Chief Judicial Magistrate, Tuticorin, under Section 366(1) Cr.P.C. Criminal Appeal No.326 of 2003 is by A4 and A9, Criminal Appeal No.327 of 2003 is by A5 and A6, Criminal Appeal No.328 of 2003 is by A7 and A10 , Criminal Appeal No.329 is by A12 and Criminal Appeal No.338 of 2003 is by A1, A2, A3, A8, A11, A13 and A17, in Sessions Case No.377 of 2 003 on the file of the learned Additional Sessions Judge -cum- Chief Judicial Magistrate, Tuticorin. In this judgment, the appellants will be referred to in the same order as they were arrayed before the learned Sessions Judge, for the sake of convenience. The appellants were tried along with 15 others, who were acquitted by the learned Sessions Judge and in this judgment, the acquitted accused, A14 to A16 and A18 to 29, will also be referred to in the same order as they were arrayed before the learned Sessions Judge. Since the above appeals and the reference arise out of a single Sessions Case, they are disposed of by the following common judgment.

2. A1 to A29 were tried before the learned Sessions Judge on an allegation that in pursuance of the conspiracy hatched in the house of A1 8 at 6.00 p.m. on 27.2.1998 and at 7.00 a.m. on 2.3.1998, they attacked and caused the death of Vijay @ Vijay Amirtharaj (D1), Anand @ Anand Amirtharaj

(D2), Anthony Amaladasan (D3), Anthony Vinoboss (D4), Anthonysamy @ Pasumpon (D5), and Jayaprakash (D6), while they were travelling in a bus from Kulathur to Tharuvaikulam, along with P.Ws.1 to 3, Jayarani and Prakasiammal, after throwing lighted torches at the bus. The learned Sessions Judge acquitted all the accused under Section 120-B IPC, but found A1 to A13 guilty under Section 148 IPC and found A17 guilty under Section 147 IPC and on being found guilty, A1 to A13 were sentenced each to suffer rigorous imprisonment for two years and to pay a fine of Rs.2000/- with a default sentence of three months' simple imprisonment and A17 was sentenced to suffer rigorous imprisonment for one year and to pay a fine of Rs.1000/- with a default sentence of simple imprisonment for one month. A7 and A12, on being convicted under Section 436 r/w 149 IPC framed under Charge No.4, were sentenced each to suffer rigorous imprisonment for seven years and to pay a fine of Rs.7000/- and in default of payment of fine, each of them had to undergo simple imprisonment for one year. Under Charge No.5, A1 to A6, A8 to A11, A13 and A17, on being convicted under Section 436 r/w 149 IPC, were awarded similar sentence, which the learned Sessions Judge imposed on A7 and A12 under Charge No.4. A8, A11 and A13, on being found guilty under Section 302 r/w 149 IPC framed under Charge No.6, on an allegation that they attacked and caused fatal injuries on D1, were sentenced each to suffer imprisonment for life and each one of them was also directed to pay a fine of Rs.10000/- with a default sentence of two years' simple imprisonment. A1 to A7, A9, A10, A12 and A17 were also charged under Section 302 r/w 149 IPC under Charge No.7 and found guilty as charged, for which, the learned Sessions Judge imposed similar sentence, which he imposed on A8, A1 1 and A13 under Charge No.6.

3. The learned Sessions Judge under Charge No.8, charged A1 to A3 under Section 302 r/w 149 IPC for causing the death of D2 and on finding them guilty as charged, sentenced each one of them to imprisonment for life and also to pay a fine of Rs.10000/- with a default sentence of two years' simple imprisonment. Under Charge No.9, A4 to A13 and A17 were charged under Section 302 r/w 149 for sharing the common object of A1 to A3 in causing the death of D2 and the learned Sessions Judge, on finding them guilty, imposed similar sentence, which he imposed on A1 to A3 under Charge No.8. A4 to A6, A9 and A10, under Charge No.10, were charged under Section 302 r/w 149 IPC for the murder of D3 and under Charge No.11, A1 to A3, A7, A8, A11 to A13 and A17 were charged under Section 302 r/w 149 IPC for sharing the common object of the accused charged under Charge No.10 and the learned Sessions Judge, finding the accused charged under Charge Nos.10 and 11 guilty, sentenced A4 to A6, A9 and A10, who were charged under Charge No.10 , to death and also directed each one of them to pay a fine of Rs.100 00/- with a default sentence of two years' simple imprisonment, while sentencing A1 to A3, A7, A8, A11 to A13 and A17, who were charged under Charge No.11, to imprisonment for life and also to pay a fine of Rs.10000/- with a default sentence of simple imprisonment for two years. A7 and A12 were charged under Section 302 r/w 149 IPC framed under Charge No.12 for the murder of D4 and on being convicted, each one of them was sentenced to death and also directed to pay a fine of Rs.10000/- with a default sentence of two years' simple imprisonment. The learned Sessions Judge, while convicting A7 and A12 under Section 302 r/w 149 IPC under Charge No.12 for causing the death of D4, and sentencing each one of them to death, thought it fit to impose imprisonment for life on A1 to A6, A8 to A11, A13 and A17 under Charge No.13, which was framed against them under Section 302 r/w

149 IPC for sharing the common object of A7 and A12 in causing the death of D4, and each one of them was also directed to pay a fine of Rs.10000/- with a default sentence of two years' simple imprisonment.

4. A12 was charged under Charge No.14 framed under Section 302 IPC for causing the death of D5 and on being convicted, he was sentenced to death and also directed to pay a fine of Rs.10000/- and in default of payment of fine, he will undergo simple imprisonment for two years. Under Charge No.15, A1 to A11, A13 and A17 were charged under Section 302 r/w 149 IPC for sharing the common object of A12 in causing the death of D5 and on being convicted, each one of them was sentenced to undergo imprisonment for life and also directed to pay a fine of Rs.10000/- with a default sentence of two years' simple imprisonment. The learned Sessions Judge imposed death sentence on A7 under Charge No.16 framed under Section 302 IPC for causing the death of D6 and directed him to pay a fine of Rs.10000/- with a default sentence of simple imprisonment for a period of two years, while imposing imprisonment for life on A1 to A6, A8 to 13 and 17 under Charge No.17 framed under Section 302 r/w 149 IPC, for sharing the common object of A7 in causing the death of D6, and directing each one of them to pay a fine of Rs.10000/- with a default sentence of simple imprisonment for two years. A4 was charged under Charge No.18 framed under Section 324 IPC for causing injury to P.W.4 and the learned Sessions Judge, finding him guilty as charged, sentenced him to suffer rigorous imprisonment for one year and to pay a fine of Rs.1000/- with a further direction that he will undergo simple imprisonment for one month if the fine amount is not paid. A4 was also charged under Section 326 IPC framed under Charge No.19 for causing grievous injury to P.W.2, for which, on being convicted, he was sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs.3000/- with a default sentence of simple imprisonment for six months. A charge under Section 212 r/w 302 IPC was also framed under Charge No.20 against A29, but it ended in acquittal. The present appeals challenge the above conviction and sentence and the reference is for the confirmation of the death sentence imposed upon some of the accused.

5. Shorn of unnecessary details, the case of the prosecution, as could be discerned from the oral and documentary evidence, can be briefly summarised as follows:-
P.W.1 is the mother of D1 and D2. P.W.2 is the cousin brother of P.W.1. P.W.3 is the wife of D4. P.W.16 is the brother of P.W.2. D3 and D4 are brothers and D5 is the father of D6. A1 to A3 and A22 are brothers. A5, A6 and Benzen (First Deceased-Accused – DA1), who died during the occurrence, are brothers. A4, 20, 24 and A25 are brothers and they are the sons of Susai Mariya Nadar, who is the husband of the sister-in-law of P.W.1. D1 was elder to D2. D1, during the relevant period, was studying and D2 was eking out his livelihood as a fisherman. In the year 1974, the uncle of P.W.1, Rajan Nadar, and his sons murdered Savarimuthu. Thereafter, there were several instances and the prosecution witnesses and the accused party were cutting each other resulting in several criminal complaints being filed against both parties. In all the criminal cases, the prosecution party and the accused party were figuring either as accused or as witnesses. In the year 1980, there was a lull in the activities of both the parties only to be ignited in the year 1996 during the Panchayat Board election. Anthony Xavier and A6 contested the

elections. Anthony Xavier won by defeating A6. On account of this, A24, A26 and others murdered Anthony Xavier. On 22.12.1997, at Tharuvaikulam beach, A20 was cut by D1 to D6 and one Soundararaj and in respect of the incident, a crime was registered and the committal proceedings were pending before the Court of Judicial Magistrate, Vilathikulam. Ex.P-20 is a copy of the printed first information report in the said crime. The accused party were threatening the deceased party and the prosecution witnesses that they will be destroyed totally.

6. On 4.3.1998, D1 to A6 accompanied by P.Ws.1 to 3, Jayarani, who is the wife of D5, and Prakasiammal, the mother of D3, went to the Court of Judicial Magistrate at Vilathikulam, in connection with the case. After the case was adjourned to 7.4.1998, they came to the busstand at Vilathikulam and boarded a bus in order to reach their village. They alighted at Kulathur to get a bus, which will take them to their village and boarded a bus at Kulathur at 11.35 a.m. D1 to D6, P.Ws.1 to 6 and two others as well as Jayarani and Prakasiammal, were in the bus, along with other passengers. P.W.5 was the conductor and P.W.6 was the driver of the bus. D5 and D6 purchased tickets to Tuticorin and others purchased tickets to Tharuvaikulam. The tickets were purchased by D5. When the bus reached the junction at Jakkammalpuram at about 12.15 p.m., a green-colour van, M.O.27, bearing Registration No.TN-69-A-3866 came from the opposite direction and the accused alighted from the van. They were armed with knives, aruvals, swords, sticks and lighted torches. A1 to A13, Joseph (Second Deceased-Accused DA2), who died subsequent to the incident, and Benzen (DA1) alighted from the vehicle along with the other accused. A7, A12 and DA2 threw the lighted torches at the bus and the bus caught fire. A1, A2 and A3 boarded the bus through the front door and through the rear door of the bus, A4 to A7 and A9 along with DA1 entered. A4 to A6 were having swords and A10 was having a stick and DA1 was having a knife. There were more than 55 passengers in the bus. The accused, on entering the bus through the front and rear doors, asked the passengers to alight and the passengers alighted. P.Ws.5 and 6 were threatened not to move the bus. They also gave a warning that every one, except for D1 to D6, should alight from the bus. After the passengers alighted, D1 to D6, P.Ws.1 to 4, Jayarani and Prakasiammal were alone in the bus. The accused threatened the ladies to alight and P.Ws.1 and 3 started crying and did not get down from the bus; but, they were forced to get down by the passengers. Accordingly, P.Ws.1 and 3, Jayarani and Prakasiammal got down from the bus and D1 to D6 and P.W.2 were alone inside the bus. D1 was pushed through the front door and A8, A11 and A13 repeatedly cut him on various parts of his body. D2 came out of the bus with burn injuries and he was cut by A1 to A3. D3, while coming out the rear door of the bus, was cut by A4, A5 , A6 and A9. Benzen (DA1) was having a knife and the same was snatched by D3, with which he stabbed DA1 on the stomach. Thereafter, D3 was cut repeatedly and he fell down through the rear door. While D4 to D6 attempted to come out of the bus through the front door, Joseph (DA2) cut D4, A7 cut D6 and A12 cut D5. They fell inside the bus and were burnt as the bus was burning. P.W.2 came out of the bus through the front door and he was cut by A4 on his hands and also on his neck. P.W.2 ran away from the place. Thereafter, DA1, who suffered injuries at the hands of D3, was placed in the van and all the accused left from the scene of

occurrence in the van.

7. P.W.1, accompanied by P.W.3, leaving Jayarani and Prakasiammal at the place, went to Tharuvaikulam Police Station and reached it at 1 .30 p.m. P.W.1 gave an oral complaint to P.W.44, the Head Constable. The oral complaint of P.W.1 was reduced into writing by P.W.44 and the same is Ex.P-1. P.W.44, on the complaint, Ex.P-1, registered a case in Crime No.5 of 1998 against the accused, whose names are found mentioned in the said complaint, under Sections, 147, 148, 341, 506 (ii), 307, 302 and 436 IPC. He prepared express reports and Ex.P-25 is a copy of the printed first information report in the crime. At that time, P.W.2, accompanied by his brother, P.W.16, also reached the police station and finding injuries on P.W.2, he was referred to the hospital for treatment.

8. On being referred, P.W.2 appeared before P.W.47 at 2.15 p.m. and on his person the doctor found the following injuries:-

1.An incised wound on the right arm measuring 10 x 5 x 5cm.
2.An incised wound on the chin measuring 3 x 1 x 1 cm.
3.An incised wound on the left arm measuring 2 x 1 x 1 cm.

Ex.P-31 is the wound certificate issued by the doctor with her opinion that injury No.1 is grievous in nature. P.W.4, who also suffered injuries, reached the hospital on his own and presented himself before the same doctor at 4.45

p.m. and the doctor, on examining him, found on his person an incised wound measuring 3 x 1 x 1 cm on the left side of his back, which she noted in Ex.P-30, the wound certificate.

9. In the meantime, P.W.44 sent express reports to the higher officials and to the court. P.W.50, the Circle Inspector of Police of Kulathur Circle, while he was in the office of the Superintendent of Police, Tuticorin, received an information at 1.00 p.m. over V.H.F. from Tharuvaikulam Police Station, about the occurrence and reached the scene of occurrence at 1.40 p.m. He received a copy of the printed first information report at the scene of occurrence at 3.45 p.m. He, thereafter, took up investigation in the crime and prepared an observation mahazar, Ex.P-35, and drew a rough sketch, Ex.P-36. Inquest over the dead body of D1 was conducted in the presence of panchayatdars between 6.45 p.m. and 10.45 p.m. on 4.3.1998 by preparing Ex.P-37, the inquest report. Inquest over the dead body of D2 was conducted between 10.45 p.m. and 11.45 p.m. in the presence of panchayatdars and Ex.P-38 is the inquest report. Between 11.45 p.m. and 00.45 a.m. on the night of 4/5.3.1998, inquest over the dead body of D3 was conducted in the presence of panchayatdars by preparing the inquest report, Ex.P-39. Inquests over the dead bodies of D4 to D6 were conducted by P.W.48, Inspector of Police, Ettaiyapuram, on the orders of the Superintendent of Police. Inquest over the dead body of D5 was conducted between 10.45 p.m. and 11.45 p.m. on 4.3.1998 in the presence of panchayatdars and the inquest report is Ex.P-32. Between 11.45 p.m. and 00.45 a.m. on the night of 4/5.3.1998, inquest was conducted over the dead body of D4 in the presence of panchayatdars by preparing Ex.P-33, the inquest report. Ex.P-34 is the

inquest report in respect of the inquest conducted over the dead body of D6 between 00.45 a.m. and 1.45 a.m. on the night of 4/5.3.1998. At the time of the inquests conducted over the dead bodies of D1 to D3, Jayarani and Prakasiammal were examined and their statements were recorded; but, no witness was examined at the time when the inquests over the dead bodies of D4 to D6 were conducted. After the inquests, the dead bodies were despatched through police constables along with requisitions to the medical authorities, for conducting autopsy.

10. Meanwhile, Benzen (DA1), who suffered injuries at the hands of D3, was produced before the doctor Mariyam Beevi, P.W.47, at Government Hospital, Tuticorin, at 1.10 p.m. and the doctor, on examining him, found him dead.

11. On receipt of the requisition, Ex.P-28, issued by P.W.50, and the dead body of D1 being produced by P.W.35, P.W.46, the Civil Assistant Surgeon attached to Government Hospital, Tuticorin, conducted autopsy on the body of D1 and found the following injuries:-

1.An incised wound 6" x 2" x skin-deep transversely placed above left ear.
2.Neck is severed and hanging by skin tag anteriorly from the trunk.
3.An incised wound 3" x 3" x 4" transversely placed just above wound No.2.
4.An incised wound 3" x 2" x skin-deep exposing underlying bone transversely place above wound No.1.
5.The left upper limb is severed from the trunk and hanging by skin tag only.
6.An incised wound 4" x 2" between left thumb and index fingers.
7.An incised wound at the ball of the left middle finger and hanging by skin tag only.
8.An incised wound 6" x 4" x 4" transversely placed upper part of back of left thigh cutting underlying muscles and bone partially.
9.An incised wound 4" x 4" x 2" transversely placed in the left supra-clavicular region.
10.An incised wound 2" x 2" x 1" in the inter-scapular region vertically placed.
11.An incised wound 3" x 1" x 1" transversely placed below injury No.10.

The doctor issued Ex.P-29, the post-mortem certificate, with his opinion that the deceased would appear to have died of shock and haemorrhage due to the multiple injuries suffered, about 16 to 24 hours prior to post-mortem.

12. On receipt of the requisition, Ex.P-9, issued by P.W.50, and the dead body of D2 being produced by P.W.36, P.W.11, the Civil Assistant Surgeon attached to Government Hospital, Tuticorin, conducted autopsy on the body of D2 and found the following injuries:-

1.Middle of forearm of right upper limb was cut and part of the skin was attached to the upper segment.
2.A lacerated injury present over the right knee.
3.A lacerated injury present over the right side of the fact involving right ear and right eye (5" x 2" x 3").
4.Two separate lacerated injuries present over the right shoulder about 1"

part (4" x 2" x 2") □ (3" x 2" x 1 =").
5.A lacerated injury over the left side of the fact involving left eye and left nose (5" x 3" x 2").
6.(a) A lacerated injury present over the left side chest (2" x 1" x 3").
(b) A lacerated injury present over the right side chest (2" x 1" x 1 ").
7.A lacerated injury present over the dorsal aspect of left upper arm (2 =" x 1 =" x 1").
8.A lacerated injury present in the middle of left forearm (2 =" x 1 =" x 1").
9.Two separate lacerated injuries present over the back of neck (3" x 2" x 2" each).

The doctor issued Ex.P-10, the post-mortem certificate, with his opinion that the deceased would appear to have died of shock and haemorrhage due to the multiple injuries and the injury to the left lung.

13. On receipt of the requisition, Ex.P-26, issued by P.W.50, and the dead body of D3 being produced by P.W.38, P.W.45, the Civil Assistant Surgeon attached to Government Hospital, Tuticorin, conducted autopsy on the body of D3 and found the following appearances:

Body was completely charred and the features of the viscera (Not clear) could not be identified because of extensive complete burns.

The doctor issued Ex.P-27, the post-mortem certificate, with his opinion that the deceased would appear to have died of extensive burns leading to complete charring.

14. On receipt of the requisition, Ex.P-5, issued by P.W.48, P.W.9, the Civil Assistant Surgeon attached to Government Hospital, Tuticorin, conducted autopsy on the body of D4 and found the following appearances:-

A body of a male lying on its back. Extensive charring from head to feet in skin, subcutaneous tissue and muscles over abdomen. Left fracture stump is seen because of charring.All the organs are pale, shrunk and dry.

The doctor issued Ex.P-6, the post-mortem certificate, with his opinion that the deceased would appear to have died of deep-seated burns with charring all over the body surface.

15. On receipt of the requisition, Ex.P-11, issued by P.W.48, and the dead body of D5 being produced by P.W.37, P.W.12, the Civil Assistant Surgeon attached to Government Hospital, Tuticorin, conducted autopsy on the body of D5 and found the following appearances:-

Completely charred body. Upper part of the skull is missing. Loss of both upper limbs from the mid-point of upper arm. Loss of both lower limbs below the hip joint. Charred intestines protruding through the anti-abdominal wall.

The doctor issued Ex.P-12, the post-mortem certificate, with her opinion that the deceased died of deep-seated extensive burns and charring of the body.

16. On receipt of the requisition, Ex.P-7, issued by P.W.48, and the dead body of D6 being produced by P.W.39, P.W.10, the Civil Assistant Surgeon attached to Government Hospital, Tuticorin, conducted autopsy on the body of D6 and found the following appearances:-

On the body of male lying on his back extensively charred from head to feet in skin, subcutaneous and muscle over abdomen charred ending both humerus and charred out ends of both tibia and fibula (Upper end below to knee joints) seen. All the organs are shrunken, pale and dry.

The doctor issued Ex.P-8, the post-mortem certificate, with her opinion that the deceased died of deep-seated burns with charring all over the body.

17. P.W.50, in the meantime, continuing with his investigation seized M.O.11 blood-stained earth, M.O.12 sample earth, M.O.13 series card-board pieces, M.O.14 series burnt wires, M.O.15 series plastic pieces, M.O.16 series burnt nails, M.O.17 series nuts, M.O.18 series bolts, M.O.19 series broken glass pieces, M.O.20 burnt ash, and M.O.21 molted lead, under Ex.P-40 attested by the witnesses. Thereafter, he questioned P.W.1, P.W.3, P.W.5, P.W.6 and others, whose statements were recorded. He left the scene of occurrence and reached Government Hospital, Tuticorin, and at 4.30 a.m., questioned P.Ws.2 and 4 and recorded their statements. Between 6.00 a.m. and 8.30 a.m. on 5.3.1998, inquest over the dead body of Benzen (DA1) was conducted by P.W.50 at the mortuary at Government Hospital, Tuticorin, in the presence of panchayatdars. Ex.P-41 is the inquest report. At the time of inquest, he questioned Prakasiammal and recorded her statement. After the inquest, a requisition was issued to the medical authorities for conducting autopsy on the body of DA1.

18. Post-mortem on the body of Benzen (DA1) was conducted by P.W.13 , Civil Assistant Surgeon, Government Hospital, Tuticorin, on receipt the requisition, Ex.P-13 issued by P.W.50, and he found a stab wound on the right side of the abdomen 10 cm lateral to umbilicus, measuring 5 cm x 3 cm and it was seen entering into abdomen. The doctor issued Ex.P-14, the post-mortem certificate, with his opinion that the deceased would appear to have died of shock and haemorrhage due to the multiple injuries sustained, about 20 to 24 hours prior to postmortem.

19. P.W.50, meanwhile, continued with his investigation and questioned the doctors and recorded their statements on 5.3.1998. He also gave a requisition to the motor vehicle inspector, P.W.15, to examine the bus and on the same day, examined two witnesses and recorded their statements. After returning to the police station at 8.15 p.m., he questioned the police constables and recorded their statements. On 6.3.1998, he received Ex.P-16, the report of the motor vehicle inspector and he questioned P.W.15, the motor vehicle inspector, and recorded his statement.

20. At about 5.30 p.m. on 7.3.1998, P.W.50 arrested A8 in the presence of P.W.17 and when questioned, A8 gave a statement, the admissible portion of which is marked as Ex.P-42 in the case. In pursuance of Ex.P-42, a sword, M.O.22, was seized under a mahazar Ex.P-43 attested by P.W.17. At about 5.45 p.m., the officer arrested A14 to 19 in the presence of P.W.17 and M.O.23, the T.V.S.50 moped alleged to have been used by A10 and Benzen (DA1) was seized under a mahazar Ex.P-4 4. A1, A2 and A9 were arrested in the presence of P.W.17 at about 6.45 p.m. on the same day and A2 gave a statement, the admissible portion of which is Ex.P-45. Pursuant to Ex.P-45, a sword, M.O.24, was seized under a mahazar Ex.P-46. At 10.00 p.m., A17 was arrested and thereafter, M.Os.25 and 26, aruvals, were seized under a mahazar, Ex.P-47, from the van, M.O.27, which was seized under a mahazar, Ex.P-48. A6 and A13 were arrested on 10.3.1998 by the officer in the presence of P.W.18 and in pursuance of the admissible portion of the statement, Ex.P-49, given by A6, M.Os.28 and 29, a sword and an aruval, were seized under a mahazar Ex.P-50. A29 was arrested on 11.3.1998 and A2 7 was arrested on 12.3.1998. At about 8.00 p.m. on 13.3.1998, A7 was arrested in the presence of P.W.20 and at his instance, a sword, M. O.30, was seized under a mahazar Ex.P-51. A22 to A26 were arrested at 6.00 a.m. on 20.3.1998 in the presence of P.W.20 and thereafter, M. Os.31 and 32, aruvals, were seized under a cover of mahazar Ex.P-52. A4 and A5 surrendered before the court on 9.3.1998 and 16.3.1998 respectively and after obtaining orders from the court to take them into police custody, on 23.3.1998, they were taken into police custody and questioned in the presence of P.W.19, and pursuant to the admissible portions of the statements, Exs.P-54 and P-53, given by A4 and A5 respectively, M.Os.33 and 34, aruvals, were seized under a mahazar Ex.P-55. A3, who surrendered before the court on 16.3.1998, was taken into police custody on 25.3.1998 on the orders of the court and when he was questioned in the presence of P.W.17, he gave a statement, the admissible portion of which is marked as Ex.P-57. Pursuant to Ex.P-5 7, M.O.25, an aruval, was seized under a mahazar Ex.P-58.

21. Further investigation was taken up by P.W.51 on 27.3.1998. P. W.51, on taking up investigation from his predecessor, P.W.50, gave a requisition to the District Collector to detain some of the accused under the Tamil Nadu Prevention of Dangerous Activities of Boodleggars, Traffic Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders and Slum Grabbers Act, 1982 (Tamil Nadu Act 14 of 1982). A28 was arrested at 6.00 a.m. on 15.4.1998 in the presence of witnesses, when he was at Kulathur bus-stop, as he was involved in two other crimes, one registered at Tharuvaikulam Police Station and the other at Kulathur Police Station. He was questioned and his statement was recorded. P.W.51 also seized a diary under a mahazar, Ex.P-59, from a telephone booth. He questioned two more witnesses and recorded their statements and later, A28 was sent to court for remand. On 20.4.1998, A11 was arrested in the presence of P.W.22 and another and in pursuance of the admissible portion of the statement, Ex.P-61, given by him, the police party was taken to the house of one Albert at Vellappatti, where from the backyard, M.O.37, an aruval, was produced by him and it was seized under a cover of mahazar, Ex.P-62, attested by the same witnesses. A11 was later sent to court for remand. P.W.51 questioned other witnesses including an advocate and also P.W.47, the doctor, who found the dead body of Benzen (DA1) at the hospital, and recorded their statements. The material objects were sent to court with a

requisition to forward them for analysis and after the completion of investigation, the final report was filed against the accused on 5.6 .1998.

22. The accused were questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against them and they denied all the incriminating circumstances and three witnesses were examined as D.Ws.1 to 3. D.W.1, the medical officer attached to Government Hospital, Tuticorin, was examined to show that A4, on being produced before him by the police, was examined by him and that he found the following injuries, which he noted in Ex.P-56, the wound certificate:-

1.Lacerated injury right shoulder 5 x 1 x 1 cm.
2.Lacerated injury right leg 4 x 1 x 1 cm.
3.Lacerated injury right thigh 5 x 1 x 1 cm.
4.Lacerated injury right thigh above the knee 3 x 1 x 1 cm.

D.W.1 was also examined to establish that to him, A4 has stated that the injuries suffered by him were suffered while he was driving a motor-cycle at Coimbatore, when it hit against a cyclist. D.W.2, who was working as an assistant in Ottapidaram Panchayat Union office, was examined to mark an entry, Ex.D-1, in the attendance register maintained at the Noon Meal Centre, Government High School, Tharuvaikulam, to show that on 4.3.1998, P.W.1, who was working as a noon meal organiser at the Centre, attended office and signed in the attendance register. D.W.3 was examined to establish that A3 was working as a supervisor between 1.7.1997 and 6.3.1998 at Darsini Textiles (P) Ltd., Coimbatore, and that he came to the mill to attend his work on 27.2.199 8 as well as on 4.3.1998. Through D.W.3, Ex.D-2, the letter given by the Director of the company certifying the attendance of A3, and Exs.D-3 and D-4, the entries for the month of February and March, 1998, made in the attendance register maintained at the office, were marked. In short, the case of the defence is that P.W.1 was not at the scene of occurrence and A4 sustained injuries at Coimbatore and further, A3 was away at Coimbatore working in the textile mills, at the relevant point of time.

23. The cause of the death of D1 to D6 is not in dispute. The evidence of the doctors, who conducted autopsy and who issued the postmortem certificates, with which we have already dealt with, show that D1 to D3, died on account of the injuries suffered by them and D4 to D6 died on account of burn injuries. The doctors could not give the exact cause of the death of D4 to D6, as the bodies were totally charred. But, the fact remains that their dead bodies were found along with the dead bodies of D1 to D3 at the scene of occurrence. On the medical evidence, we hold that D1 to D6 died on account of homicidal violence, as the said fact is not disputed by the accused.

24. The question, that is to be decided by us, is whether the learned Sessions Judge was justified in convicting A1 to A13 and A17 on the evidence adduced, though he has chosen to acquit A14 to A16 and A18 to A29. This court is fully aware that an acquittal of some accused in a case, is not a ground to reject the entire prosecution version, if the evidence establishes the complicity of other accused in the crime and the court is always expected to remove the chaff from the grain and if the evidence is satisfactory as against

some accused, the court can still find them guilty, and the acquittal of the other accused will not be a bar to do so.

25. Keeping the above principles in mind, this court has to analyse the recorded evidence to find out whether the accused, who have filed the above appeals, have inflicted injuries and committed the murder of six persons. The prosecution, with a view to establish the allegations against the convicted accused as well as the other acquitted accused, relied upon the oral evidence of six persons, who were examined as P.Ws.1 to 6 and of the six witnesses so examined, P.Ws.4 to 6 have turned hostile. P.Ws.1 to 3, who are closely related to the deceased, alone supported the prosecution version. The court has to find out whether their evidence is trustworthy to uphold the conviction of the convicted accused.

26. It is an admitted fact that there was no love lost between the accused group and the deceased group and several criminal cases were filed against each other. The accused and the deceased were figuring either as accused or as witnesses in all the criminal cases. Therefore, it is clear that there was deep-seated animosity between the two groups and keeping this in mind, the evidence of the witnesses is to be scrutinised carefully as motive is a double-edged weapon, since the prosecution witnesses will be tempted to implicate even the persons, who have not participated in the incident, on account of the animosity which exists between them.

27. According to P.W.1, on the date of incident, she went along with P.W.2, P.W.3, Jayarani, Prakasiammal, and D1 to D6 to the Court of Judicial Magistrate, Vilathikulam, in connection with a criminal case, which was pending committal against D1 to D6, as regards the incident which took place on 22.12.1997, as, according to the prosecution, in the said criminal case, A20 was cut by D1 to D6 and one Soundararaj. It is the evidence of the witnesses that after the case was adjourned to 7.4.1998, they boarded a bus at Vilathikulam and after alighting at Kulathur, boarded another bus to reach Tharuvaikulam. It is the further case of the witnesses that while the bus was approaching a junction at Jakkammalpuram, a green-colour van, M.O.27, came in the opposite direction and that the accused coming out of the van, boarded the bus and that after asking the passengers to alight, cut D1 to D6 and also inflicted injuries on P.W.2. It is the evidence of the witnesses that P.W.4 sustained an injury during the course of the same transaction and D3 stabbed Benzen (DA1), who also came along with the accused, to attack the deceased. They have further stated that after the incident, the accused left in the van taking the injured DA1. According to the prosecution, P.W.1, leaving Jayarani and Prakasiammal at the scene of occurrence, reached Tharuvaikulam Police Station, accompanied by P.W.3, where she gave a complaint, Ex.P-1, to P.W.44, the Head Constable. The evidence of P.W.44 is that the said complaint of P.W.1 was recorded at 1.30 p.m. and that he registered the complaint as a crime and prepared the printed information report, Ex.P-25. In the said complaint, P.W.1 has implicated A1 to A10, A13, A20, A22 to 26, Benzen (DA1) who allegedly suffered injuries at the hands of D3, and Breshnev. Breshnev, who was mentioned as one of the assailants in the said complaint, Ex.P-1, was not arrayed as an accused by the prosecution before the trial court and there is no explanation from the side of the prosecution as to why the said Breshnev was dropped from the list of the accused arrayed, when the final report was

filed in the court. Be that as it may.

28. Though the prosecution, through the evidence of P.W.44, claimed that the first information statement, Ex.P-1, was given at 1.30 p.m. and thereafter, the crime was registered under Ex.P-25, P.W.50, the officer, who initially investigated the crime on the directions of the Superintendent of Police, Tuticorin, has stated that while he was at the office of Superintendent of Police, Tuticorin, he received a message over V.H.F. from Tharuvaikulam even at 1.00 p.m. about the occurrence and thereafter, proceeded to the scene-place, which he claimed to have reached by 1.40 p.m. P.W.50 has further claimed, in his evidence, that before he left the office of the Superintendent of Police, Tuticorin, he sent a message to the fire service station requesting the fire service personnel to go over to the scene of occurrence to put down the fire. The prosecution, strangely, did not examine any officer from the fire service department nor did it choose to mark the document kept maintained at the fire service station, in which entries are made as and when information is received about the fire accident. The non-examination of any of the fire service officers and the failure of the prosecution to mark the document maintained at the fire service station, in the background of the admission of P.W.50 that he received the message about the incident, from Tharuvaikulam Police Station at 1.00 p.m., create a suspicion in the mind of the court as to the time at which Ex.P-1 came into existence. If the complaint, Ex.P-1, was registered as a crime only at 1.30 p.m., then P.W.50 could not have received the message about the incident at 1.00 p.m. At this stage, it is relevant to note that the first information statement, Ex.P-1, which, according to P.W.44, was registered at 1.30 p.m. on 4.3.1998, along with the printed first information report, Ex.P-25, was received by the learned Magistrate only at 1.00 a.m. on 5.3.1998. P.W.41, the police constable, to whom, the first information statement, Ex.P-1, and the printed first information report, Ex.P-25, were handed over, has come out with a strange explanation, in crossexamination, by stating that after Exs.P-1 and P-25 were handed over to him, he went to the Court of Judicial Magistrate, Vilathikulam, at 10.00 p.m. and on coming to know that the learned Magistrate is in his residence at Kovilpatti, left Vilathikulam in a lorry for Kovilpatti, covering a distance of 35 kilometers, and handed over the two documents to the learned Magistrate. It is strange for the police constable to go to the Court at 10.00 p.m. for the purpose of handing over the complaint, Ex.P-1, and the printed first information report, Ex.P-25, since no judicial officer is expected to be present in court at that odd hour and the present explanation of the prosecution, through P.W.41, could only be considered as an afterthough t to explain the delayed receipt of the complaint, Ex.P-1, and the printed first information report, Ex.P-25, by the learned Magistrate.

29. Keeping the above facts in mind, we will have to look at Ex.P-1. In Ex.P-1, as we stated earlier, the names of A1 to A10, A13, A20, A22 to A26, DA1 and Breshnev were mentioned as accused, who participated in the incident and they were also attributed with specific overt acts of cutting and stabbing the deceased-persons, after lighted torches were thrown at the bus by A7, A9, A20 and A24. Therefore, the prosecution at the earliest point of time, through Ex.P-1 alleged to have been given by P.W.1, came out with the version

that A7, A9, A20 and A24 came to the scene of occurrence and threw the lighted torches at the bus and A22 to A26 along with Breshnev, joining with other accused, inflicted stab and incised injuries on the deceased-persons, which version was given up at a later point of time when the witnesses were examined in court. In court, the witnesses have stated that A22 to 26 and Breshnev were not at the scene of occurrence. The prosecution had a strange explanation to offer, through P.W.2, before the trial court for not implicating A22 to A26 and Breshnev with specific overt acts. It is the case of P.W.1 that after she reached the police station and gave a complaint, in which P.W.3 attested, P.W.2, who also suffered injuries, reached the police station and questioned her by asking her as to the persons, against whom she had given the complaint. We are at a loss to understand as to why P.W.2, though, according to the prosecution, was present at the time of occurrence and suffered injuries, should ask P.W.1 as to the persons against whom, the complaint was given. It is not as if P.W.2 questioned P.W.1 whether she gave a complaint; but, the question of P.W.2 to P.W.1 is as to the names of persons, who are mentioned as accused in the complaint, Ex.P-1. As stated earlier, there is no reason for P.W.2 to ask such a question to P.W.1, since if he was really present along with P.Ws.1 and 3, he would have been certainly under the impression that the complaint would have been given against the persons, who actually participated in the incident. The present case of the prosecution that P.W.2 questioned P.W.1, in our view, could only be an afterthought, since the prosecution must have realised, after Ex.P-1 was given, Ex.P-25 was prepared and they were despatched to the court, that A22 to A26 were in judicial custody from 2.3.1998 in connection with Crime No.105 of 1998 of Kariapatti Police Station and therefore, found it difficult to stick on with the version given in Ex.P-1 by P.W.1. They, therefore, elicited from P.W.2 that A22 to A26 and Breshnev were not at the scene of occurrence and P.W.1 made a mistake in mentioning their names in the complaint, Ex.P-1. P.W.1 has also stated in her evidence that P.W.2 told her that since A22 to A26 and Breshnev were not there, she wrongly gave a complaint against the above-said accused also. Two things emerge out of this and one is that P.W.1 had no compunction or qualms in implicating innocent persons, though they have not participated in the incident and the other is that P.W.2 told a lie before the trial court when he stated that he questioned P.W.1 as to the persons, whom she has implicated, since P.W.50, the investigating officer, has admitted that P.W.1 did not, in her statement, say that P. W.2 questioned her as regards the persons whom she has implicated in the complaint. P.W.2 has also, in his evidence, stated that for the first time in court, he has come out with the present version that A22 to A26 and Breshnev were not at the scene of occurrence and he did not inform anyone before that, except P.W.1, which means that he did not inform the police officer when he was examined under Section 161 Cr.P.C. that he questioned P.W.1 as to the persons whom she has implicated and also told P.W.1 that she has wrongly implicated innocent persons. The prosecution, finding it difficult to bridge the gap between the two contradictions, tried to explain it by saying that P.W.2 arrived after the complaint was recorded by P.W.44 and therefore, the mistake could not be corrected. This explanation, to say the least, is amateurish. P.W.2 has admitted in cross-examination that though he came to know that some persons, who were not present at the scene of occurrence, were implicated as accused in the complaint, Ex.P-1, by P.W.1, he did not inform P.W.44, the Head Constable,

about the alleged mistake committed by P.W.1 and P.W.44 has, in cross-examination, admitted that though the complaint, Ex.P-1, was recorded by him, he did not register it as a crime before the arrival of P.W.2. He has stated that P.W.2 has arrived while the complaint was being given by P.W.1 and went on to admit that he knew the difference between "the complaint being given" and "the complaint having been written". The above evidence of P.W.44, therefore, shows that Ex.P-1 was in the process of being recorded when P.W.2 arrived at the police station and no printed first information report was prepared registering the complaint, Ex.P-1, as a crime, at that time, and therefore, there was sufficient opportunity for P.W.2 to rectify the mistake, if there was any, in the complaint given by P.W.1 to P.W.44; but, he did not do so. This, therefore, shows that the present version in court, which is totally opposed to the version given in Ex.P-1, is an afterthought and the prosecution had come out with the present version with a view to get over the difficulty of trying to explain the absence of A22 to A26 and Breshnev at the scene of occurrence, as they were in judicial custody on that day in connection with Crime No.105 of 1998 of Kariapatti Police Station. P.W.51 has also admitted in cross-examination that P.W.44 did not say in his statement recorded under Section 161 Cr.P.C. that P.W.2 arrived after the recording of the complaint, Ex.P-1. At this juncture, the court cannot lose sight of the evidence of P.W.3, who also, in her evidence, did not say that P.W.2 questioned P.W.1, after reaching the police station, as to the names of the accused whom she has implicated in the complaint. Therefore, the conspectus of the evidence of all the witnesses, if taken together, indicate that while Ex.P-1 was being given by P.W.1 to P.W.44, P.W.2 was at the police station and A22 to A26 as well as Breshnev were implicated, even in the presence of P.W.2, with overt acts of attacking the deceasedpersons, which case the prosecution gave it up when it came up before the trial court, in view of Ex.P-17, the first information report in Crime No.105 of 1998 of Kariapatti Police Station, and the evidence of P.W.27, Inspector of Police, Kariapatti Police Station. P.W.27 has, in his evidence, stated that he investigated Crime No.105 of 1998 registered for the offences punishable under Sections 147, 341 and 323 IPC and arrested A22 to A26 in connection with the said crime and that they were sent to the Court of Judicial Magistrate No.2, Virudhunagar, for remand. The records also indicate that A22 to A26 were in judicial custody from 2.3.1998 in connection with the said crime and the prosecution, probably finding it difficult to substantiate the claim made by P.W.1 in Ex.P-1, that A22 to A26 also participated in the occurrence, changed the track and came out with a new theory of conspiracy against the accused as if they conspired at 6.00 p.m. on 27.2.19 98, which was rejected even by the trial court and the said finding had become final as no appeal is filed by the State.

30. The prosecution, while changing the track and coming out with a different version by implicating A22 to A26 with conspiracy, which was rejected by the trial court, also brought in A11, A12, A17 and Joseph (DA2) as accused. This shows that the prosecution had no consistent case from the beginning till the end and it was adding and subtracting the accused with whimsical fancies. In fact, in Ex.P-1, A7, A9 , A20 and A24 were implicated as persons, who threw lighted torches at the bus, whereas in his evidence, P.W.1 has implicated A7, A12 and Joseph (DA2) as persons, who threw lighted torches at the bus, which means that she had given up A9, A20 and A24, but

brought in A12 and DA2 as persons who set fire to the bus. As stated earlier, the names of A12 and DA2 were not even mentioned in the first information statement as persons present at the time of incident. On going through Ex.P-1 and the evidence of P.Ws.1 to 3, we also find several contradictions as regards the overt acts attributed to various accused. In Ex.P-1, D1 was alleged to have been cut by A8, A13, A26 and Breshnev, whereas in her evidence, P.W.1 has implicated A8, A11 and A13 as the persons who attacked D1. While P.W.2 gave evidence on similar lines implicating A8, A11 and A13, P.W.3 implicated A8, A9 and A11 as the persons who attacked D1, though the name of A9 is not mentioned at all in the complaint, Ex.P-1, or in the evidence of P.Ws.1 and 2. On the contrary, A11, who was implicated by all the three witnesses in court, was not shown as an accused in the complaint, Ex.P-1. In Ex.P-1, P.W.1 has implicated A1 to A3, A22 and A23 as the persons who inflicted injuries on D2 and in her evidence, she has implicated only A1 to A3 and left out A22 and A23. P.Ws.2 and 3 also did not implicate A22 and A23. While P.W.1 has implicated, in her complaint, Ex.P-1, A4 to A6, A9, A10 and Benzen (DA1) as the assailants of D3, she came out with a different version in court by not implicating A10, whereas P. W.2 implicated A10. P.W.3 did not implicate A6, A9 and A10 as the assailants of D3, though they were implicated as accused in Ex.P-1 given by P.W.1. A perusal of Ex.P-1 shows that A7, A24 and A25 attacked D4, D5 and D6; but, while giving evidence, P.W.1 has stated that D4 was cut by Joseph (DA2), D5 by A12 and D6 by A7, which means that A24 and A25, who were implicated as the accused in Ex.P-1, were given up and not attributed with any overt act in court when she gave evidence. In fact, P.W.2 did not even implicate A4, in his evidence, as the person, who inflicted injuries on his person, whereas P.W.3 has stated that A7, A12 and Joseph (DA2) cut D4, D5 and D6. She also left out A24 and A25, but added Joseph (DA2) and A12, in her evidence.

31. Keeping the above grave suspicious features in mind, when the evidence of P.Ws.1 to 3 is looked at, this court is of the opinion that their evidence cannot be accepted as trustworthy. The prosecution, before the trial court, claimed that inquests over the dead bodies of the six persons were conducted by P.Ws.48 and 50 and according to the prosecution, Jayarani and Prakasiammal were examined during the inquests conducted over the dead bodies of D1 to D3, by P.W.50. The said Jayarani and Prakasiammal were not examined in court as witnesses and P.Ws.1 to 3, who were examined as witnesses, were not examined at the time of inquest and the prosecution did not offer any explanation, before the trial court, for not examining Jayarani and Prakasiammal in court. When a specific question was put by this court to the learned Public Prosecutor as to why P.W.1 was not questioned at the time of inquest, the learned Public Prosecutor, on instructions from the officer, who was present in court, submitted that P.W.1 could not be examined as she was in a disturbed state of mind. If that be the case, we are unable to understand as to how P.W.1 was able to give a lengthy statement, Ex.P-1, implicating several accused in the crime by mentioning minute details, including the registration number of the bus and that of the van. A perusal of the statement produced in the court and which was alleged to have been given by P.W.1, does not indicate that it is the statement of a person, who was in a disturbed state of mind. The present explanation given before this court, on instructions, is, therefore, rejected. P.W.2, according to the prosecution,

ran away from the scene leaving the ladies to their fate. The conduct of P.W.2 in running away from the scene, if true, is deplorable; but, we are of the view that P.W.2 would not have been present at the time of incident along with the deceased-persons. It is to be remembered that he was treated by the doctor, P.W.47, at about 2.15 p. m. on 4.3.1998. The doctor did not say that P.W.2 appeared before her along with a memo and that he was produced by a police constable, though in Ex.P-31, it is found mentioned that P.W.2 appeared before her with a memo issued by the Sub-Inspector of Police, Tharuvaikulam Police Station, and that he was accompanied by his brother, P.W.16. The doctor, on examining him, found three injuries, which we have already extracted in the earlier part of the judgment, and when the doctor questioned him as to how he suffered injuries, P.W.2 informed her that he suffered the injuries at the hands of 20 known persons at Patanamarudur Street at 12.30 p.m. on 4.3.1998. According to the prosecution, D1 to D6 were attacked while they were in the bus, when it reached a junction at Jakkammalpuram and P.W.2 also suffered injuries at that time. If that be the case, P.W.2 had no reason to come out with a different version to the doctor by telling her that he suffered injuries at Patanamarudur Street, which is admittedly at a distance of three kilometers from Jakkammalpuram junction, which is the scene of occurrence. The suggestion made to P.W.2 is that after the murder of six persons, there was a rioting in the village and P.W.2 suffered injuries at the time of rioting. The said suggestion is probablised by the statement of P.W.2 to the doctor, P.W.47, that he suffered injuries at Patanamarudur Street at 12.30 p.m., which is also found noted in the wound certificate, P.W.31. It will not be out of place for us to mention, at this stage, that as we stated earlier, the reason given by the learned Public Prosecutor, on instructions from the officer, for not examining P.W.1 at the time of inquest, is not acceptable and the prosecution also did not have any explanation for the nonexamination of P.Ws.2 and 3 during inquest. The learned Public Prosecutor, attempting to save the situation for the non-examination of P.Ws.2 and 3 at the time of inquest, came out with a submission that since P.W.2 was at the hospital as an in-patient, he could not be examined at the time of inquest. At this stage, we have to refer to the evidence of P.W.50, who has, in his evidence, admitted that at 4.30 a.m. on 5.3.1998, he questioned P.W.2 and recorded his statement at the hospital and that he also recorded the statement of P.W.4. If P.W.2 could not be examined at the time of inquest as he was away at the hospital, then there is no explanation as to why the officer did not examine P.W.3 at the time of inquest conducted by him over the dead bodies of D1 to D3 and even the learned Public Prosecutor, before this court, could not give any satisfactory answer for the non-examination of P.W.3, though he would only say that the officer, P.W.50, as claimed in his evidence, examined P.W.3 on 5.3.1998 and therefore, the court can accept the evidence of P.W.50 that P.Ws.1 to 3 were examined on 5.3.1998, though they were not examined at the time of inquest.

32. We will now consider the submission of the learned Public Prosecutor, which was made after receiving instructions from the police officer, who was present in court, to find out whether P.Ws.1 to 3 could have been examined on 5.3.1998 as claimed by the prosecution. On going through the original records, we are not able to accept the said statement of the learned Public Prosecutor that P.Ws.1 to 3 were examined on 5.3.1998. P.W.50 has, in

his evidence, stated that at the time of inquest, he questioned Jayarani and Prakasiammal and recorded their statements, and their statements were received by the learned Magistrate at 10.00 a.m. on 5.3.1998. According to P.W.50, he has recorded the statements of P.Ws.1 to 3 after the inquest; but, he did not say as to when he recorded the statements of P.Ws.1 to 3, though he stated that he recorded the statement of P.W.2 at 4.30 a.m. on 5.3.1 998 at Government Hospital, Tuticorin, and according to him, he commenced inquest over the dead bodies of D1 to D3 at 6.45 p.m. on 4.3.199 8 and after completing the inquest over the dead bodies at the scene of occurrence, he proceeded to the hospital. According to him, he conducted inquest over the dead body of Benzen (DA1) at 6.00 a.m. and even before he conducted inquest over the dead body of DA1, P.W.2 was questioned and his statement was recorded at 4.30 a.m. If that be the case, we are at a loss to understand as to why the statements of P.Ws.1 to 3, which, according to the prosecution, were recorded on 5.3 .1998, did not reach the court till 9.6.1998. The prosecution cannot escape by coming out with an explanation through the learned Public Prosecutor in this court by stating that the statements of P.Ws.1 to 3 were sent in normal course and no sinister motive can be seen through the lens on account of the delayed receipt of these statements by the learned Magistrate, in view of the fact that the statements of the two witnesses, Jayarani and Prakasiammal, which were also recorded on 5.3.1998, were received by the learned Magistrate even by 10.00 a.m. on 5.3.1998. If the statements of the above-said two witnesses could be despatched, and received by the learned Magistrate at 10.00 a.m. on 5.3.1998, then nothing prevented the prosecuting agency from despatching the statements of the three important witnesses, P.Ws.1 to 3, along with the statements of Jayarani and Prakasiammal. The said Jayarani and Prakasiammal, whose statements were received by the learned Magistrate at 10.00 a.m. on 5.3.1998, were not produced before the court as witnesses and P.Ws.1 to 3, whose statements were received by the learned Magistrate three months after the incident, were only examined in court by the prosecution. The defence had come out with a suggestion suggesting to the officer, P.W.5 0, that Jayarani and Prakasiammal were not examined in court since their statements recorded at the time of investigation, were against the prosecution theory. In fact, Jayarani is the wife of D5 and Prakasiammal is the mother of D3 and in view of the fact that they were examined at the time of inquest, the prosecution ought to have examined them in court, but it did not do so. The prosecution also did not offer any explanation as to why they thought it not necessary to examine the said two persons in court, who were actually examined at the time of inquest, while they had chosen to examine P.Ws.1 to 3, who were not examined at the inquest and whose statements were received by the learned Magistrate only on 5.3.1998. Therefore, there is no charm in the argument of the learned Public Prosecutor that the court has to accept the evidence of the police officer, on its face value, that the witnesses, P.Ws.1 to 3, were questioned and their statements were recorded on 5.3.1998. On the contrary, the materials create a su spicion in the mind of the court that P.Ws.1 to 3 would not have been examined on the date, as claimed by the prosectuion.

33. At this juncture, it will not be out of place for us to consider Ex.D-1, the entry in the attendance register maintained at the Noon Meal Centre, Government High School, Tharuvaikulam. According to D.W.2, P.W.1 has

attended office on 4.3.1998 and has also initialled in the attendance register and he has marked the entry in the attendance register, in Ex.D-1. We have perused Ex.D-1 and a perusal of the said document shows that there are erasures and overwritings and the erasures and overwritings seem to have been made to make it appear that she was on leave from 4.3.1998 to 31.3.1998. This shows the conscious efforts on the part of the prosecution to project P.W.1 as an eye-witness, though she was at the Noon Meal Centre, Government High School, Tharuvaikulam, on the relevant date, i.e. 4.3.1998. P.W.1 has claimed, in her evidence, that she was on leave on the relevant date and sent leave letters. The prosecution did not make any attempt to produce those leave letters and later, when the defence summoned them, a letter, Ex.P-63, was received by the court in response to the summons, intimating the court that the leave letters were destroyed on account of the lapse of four years, as no document is kept maintained for such a long period. P.W.50, who initially conducted investigation, did not whisper a word in his evidence as to why he did not think it necessary to investigate to find out whether P.W.1 was on leave on the relevant date, as she was admittedly a Government servant. The learned Public Prosecutor, before this court, on instructions, submitted that P.W.50 has made an entry in the case diary stating that he has to examine the officer concerned at the Noon Meal Centre to establish that P.W.1 was on leave and the said entry is dated 27.3.1998. According to the learned Public Prosecutor, P.W.51, who succeeded P. W.50, examined P.W.25 on 4.6.1998. P.W.25 has turned hostile. If it is to be assumed that P.W.25 was examined on 4.6.1998 to find out whether P.W.1 was on leave or was on duty on the relevant date, then nothing prevented the officer, P.W.51, from seizing the leave applications of P.W.1, as they would have been certainly available in the office on that day. The present explanation of the prosecution, through Ex.P-63, that the leave letters were destroyed on account of lapse of four years between the date of occurrence and the date of trial and therefore, they could not be produced before the court, cannot be accepted by us, since it cannot lie in the mouth of the prosecution to say that the leave letters could not be produced on account of long lapse of time, as they had an opportunity of seizing them, if they were available on 4.6.1998, on which date, P.W.25 was allegedly examined by P.W.51. In the background of the above facts and in view of the non-production of the leave letters of P.W.1 by the prosecuting agency, when we look at the erasures and overwritings found in Ex.D-1, coupled with the evidence of D.W.2 that P.W.1 attended office on 4.3.1998, we are inclined to hold that P.W.1 was not present at the scene of occurrence at the time of incident and later, she was projected as an eye-witness by the prosecution. P.W.50 was cross-examined on this aspect and he has stated that in the statement of P.W.1 recorded under Section 161 Cr.P.C., the last line was not added in a different handwriting, to make it appear that on 4.3.1998 P.W.1 was on leave. On account of the denial of the officer in his evidence, we thought it prudent to look at the original statement of P.W.1 recorded by the officer and accordingly, perused the same. A perusal of the original statement of P.W.1 recorded under Section 161 Cr.P.C. clearly shows that the last line in the said statement is to the effect that "4.3.1998k; njjp ehd; tpLKiwapy; ,Ue;njd;", the free translation of which in English is, "On 4.3.1998, I was on leave" and the same is written in different ink and also in different handwriting. We have asked the learned Public Prosecutor whether the last additional line in the said statement is also there in the copy of

the statement maintained by the officer in the case diary and the learned Public Prosecutor, on going through the case diary, fairly stated that the last sentence added to the said original statement of P.W.1, is not found in the copy of the statement kept in the case diary file. This indicates that the last line could have been added after the statement was received by the court either by the prosecution or by the defence. Prima facie, we are not able to say that it could have been added by the accused or at the instance of the accused by someone else, since the said addition will not favour the defence theory. We leave the matter at that.

34. The case of the prosecution is that Benzen (DA1), one of the persons who died in the course of the same transaction and who accompanied the accused and attacked the deceased party, also suffered injuries at the hands of D3. The evidence of the witnesses show that after the incident was over, DA1 was taken in the van by the accused, when they left the scene of occurrence and the prosecution did not investigate to find out as to what transpired thereafter to DA1. A perusal of Column No.3 of the inquest report, Ex.P-41, prepared by P.W.50, in respect of the inquest conducted over the dead body of DA1, shows that when DA1 was examined by P.W.47, he was found dead and strangely, the doctor, P.W.47, in her evidence, did not whisper a word about her examining DA1 and pronouncing him head. The prosecution also did not let in any evidence to show as to who produced the dead body of DA1 before P.W.47, and P.W.51, in cross-examination, went to the extent of admitting that he did not even examine either the doctor, P.W.47, or any of the staff of the hospital to find out as to how and by whom the dead body of DA1 was brought to the hospital. The above mystery also remains unravelled.

35. A3 also came out with a plea of alibi by examining D.W.3 and through whom, marked Exs.D-2 to D-4, to establish that he was working as a supervisor in Darsini Textiles (P) Ltd. between 1.7.1997 and 6.3 .1998 and that on 27.2.1998 and 4.3.1998, he attended duties at the above-mentioned textile mills situated at Coimbatore, which is at a distance of more than 400 kilometers from the scene-village.

36. In view of the discussion made above, we find it difficult to accept the prosecution version to uphold the conviction and sentence imposed upon the appellants/accused and we, therefore, set aside the conviction and sentence imposed upon all the appellants/accused and acquit them. The

reference is rejected and the appeals are allowed. It is reported that the appellants/accused are in jail and hence, they are directed to be released forthwith unless they are required in connection with any other case.

37. Before we part with the case, we wish to observe that the learned Sessions Judge did not have a uniform policy in awarding sentence. While convicting and sentencing the appellants/accused, the learned Sessions Judge has chosen to award death sentence on A4 to A7, A9, A10 and A12, and imposed life imprisonment on the other convicted accused. The learned Sessions Judge has observed that since the dead bodies of D4 to D6 were thrown into the burning bus, A4 to A7, A9, A10 and A12 had to be awarded death sentence. We are unable to find out as to the nature of evidence on which, the learned Sessions Judge arrived at the said finding that A4 to A7, A9, A10 and A12 threw the dead bodies of D4 to D6 into the burning bus. On the contrary, the

evidence of P.W.3 only indicates that A7, A12 and Joseph (DA2) cut D4 to D6, while they were alighting through the rear door and thereafter, pushed them into the bus. In cross-examination, P.W.3 has stated that D4 to D6 were cut outside the bus and later, they were thrown into the bus. Even if this evidence is to be accepted that the dead bodies of the three persons were thrown into the burning bus, then the persons, who threw the dead bodies of D4 to D6, are A7, A12 and DA2, and we are at a loss to understand as to how the learned Sessions Judge thought fit to impose death sentence on A4 to A6, A9 and A10, besides A7 and A12. The courts, while awarding death sentence, must always have a conscious and judicial approach and there should not be any discrimination between one accused and the other. The above observation of ours can be treated as a guidance, in future cases, by the trial courts.

Index : Yes
Website: Yes
sbk

To

1.The Additional Sessions Judge -cum- Chief Judicial Magistrate, Tuticorin.
2.The Additional Sessions Judge -cum- Chief Judicial Magistrate, Tuticorin, through the Principal Sessions Judge, Tuticorin.
3.The District Collector, Tuticorin District.
4.The Public Prosecutor, Chennai.
5.The Director General of Police, Chennai.
6.The Superintendent, Central Prison, Palayamkottai.
7.The Inspector of Police, Tharuvaikulam Police Station, Tuticorin.